

BRUCE L. ROBINSON)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NORTHROP GRUMMAN SHIP SYSTEMS,)	DATE ISSUED: 02/14/2006
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	ORDER

Claimant appeals the Supplemental Decision and Order Awarding Attorney Fees and the Decision on Motion for Reconsideration (2004-LHC-00849) of Administrative Law Judge C. Richard Avery. By motion dated December 7, 2005, claimant moves to hold this case in abeyance pending the administrative law judge's decision on the merits on remand from the Board. Employer has not responded to claimant's motion.

In his initial decision, the administrative law judge denied benefits, finding that there was no causal relationship between claimant's foot condition and the work accident of April 2002. Claimant appealed this decision. The Board vacated the denial of benefits and remanded the case for reconsideration pursuant to the aggravation/combination rule and Section 20(a), 33 U.S.C. §920(a). *Robinson v. Northrop Grumman Ship Systems, Inc.*, BRB No. 05-0195 (Nov. 7, 2005).

While claimant's appeal was pending, the administrative law judge awarded claimant's counsel an attorney's fee of \$175 for obtaining payment of a medical bill, as claimant was otherwise unsuccessful in establishing his entitlement to any benefits. The administrative law judge denied claimant's motion for reconsideration. Claimant filed an appeal of the fee award, and now contends that it is premature to rule on his appeal until the administrative law judge acts on remand.

We deny claimant's motion to hold this appeal in abeyance, but we vacate the administrative law judge's fee award and remand the case. The administrative law judge should reconsider the amount of an appropriate attorney's fee in light of his decision on remand. *See generally Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Stratton v. Weedon Engineering Co.*, 35 BRBS 1 (2001) (*en banc*); 20 C.F.R. §702.132.

Claimant counsel has filed a petition for an attorney's fee of \$8,950 in BRB No. 05-0195, to which employer has filed objections. We deny the fee request at this time. Claimant succeeded only in having the case remanded for reconsideration; he has not yet obtained any benefits. Pursuant to 20 C.F.R. §802.203(c), counsel may refile his fee petition after the administrative law judge issues a decision on remand that reflects a successful prosecution of claimant's claim.

Accordingly, the administrative law judge's fee award is vacated. BRB No. 05-0592. On remand, the administrative law judge should award an attorney's fee pursuant to 20 C.F.R. §702.312, commensurate with claimant's success in obtaining benefits. Claimant's petition for an attorney's fee in BRB No. 05-0195 is denied.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge